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Counsel for Defendant  
ECOLAB INC.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CIVIL ACTION NO. 07-8623 (DLC)

MICHAEL CLARK, DAVID STARKMAN,  
FRANCO DESIMONE, and JOHN DINISI,  
individually and on behalf of all other similarly  
situated employees,

Plaintiffs,

v.

ECOLAB, INC.,

Defendant.

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**DEFENDANT'S NOTICE OF MOTION AND MOTION  
TO TRANSFER VENUE AND CONSOLIDATE  
CERTAIN PLAINTIFFS WITH FIRST FILED ACTION**

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE, that, upon the annexed Declaration of Andrew J. Voss and declarations and exhibits attached thereto, and the accompanying Memorandum of Law in Support of Motion to Transfer Venue and Consolidate Certain Claims in First Filed Action, Defendant Ecolab Inc., by and through its counsel of record, Littler Mendelson, P.C., will and hereby does move this Court, before the Honorable Denise Cote, Judge of the United States District Court, Southern District of New York, located at the United States Courthouse, 500 Pearl

Street, New York, New York, on a date and time to be set by the Court if oral argument is requested, for an Order pursuant to 28 U.S.C. § 1404(a), granting Defendant's Motion to Transfer Venue of the claims alleged by Plaintiffs Michael Clark Franco Desimone to the United States District Court for the Middle District of North Carolina, located in Greensboro, North Carolina. Transfer under Section 1404 is warranted based on the convenience of witnesses, the parties, and in the interests of justice.

In addition, Defendant moves this Court to consolidate the remaining claims of Plaintiffs David Starkman and John Dinisi with the claims now pending in the Southern District of New York in a separate civil case entitled *Masson v. Ecolab, Inc.*, Case No. 1:04-cv-4488, before the Honorable Paul A. Crotty, Judge of United States District Court. Such consolidation is appropriate based on the "first filed" rule because the claims alleged by Plaintiffs Starkman and Dinisi fall reasonably within the scope of the claims and legal issues to be determined on behalf of a collective class of individuals conditionally certified in *Masson*.

Dated: December 26, 2007

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of December 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the CM/ECF participants identified below.

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/s/ David M. Wirtz

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